

Document #1

To: The Water Counsel
20 Hazen Drive
Concord, N.H. 03302

RECEIVED

JUL 01 2004

From: Mark & Marianne Bonaiuto
7 Valcat Lane
Atkinson, N.H. 03811
Phone: (H) 603-329-5516/ Cell 603-560-6748

04-14 WtC

Date: June 29, 2004

Re: Waiver of procedural rule 203.03 Notice of Appeals.

Committee Members,

We are requesting that the water council waive procedural rule 203.02 Time for Filing of Appeals that states that "Any appeal shall be filed within 30 days of the date the decision being appealed was issued." Pursuant to procedural rule 203.30 Waiver of Rules "Any person may request the council to waive, for good cause, the application of any of these rules not mandated or required by any New Hampshire Statute."

We are formally making a motion to waive the procedural rules Env-WC 203.02 as allowed under Env-WC 203.30 and accept the untimely filing of this appeal, for good cause, based on the following facts.

I, Mark Bonaiuto, was the main communicator with the DES Wetland Bureau Shoreland Program regarding the facts that support our request for acceptance of this formal appeal allowed under Env-WC 203.30 and waive the requirements stated within Env-WC 203.02.

On Wednesday, May 12th, 2004, the Wetland Bureau Shoreland Case File #2004-00355, Daniel Osborn, Rock Island, Atkinson, request for a waiver to RSA 483-B:11, I was granted. On the same day Wednesday May 12th, 2004, I spoke with Commissioner Michael P. Nolan regarding the facts and conditions of this waiver approval. He instructed me to speak with DES Administrator of the Wetlands Bureau Collis Adams who has recommended approval of this waiver. I spoke with Mr. Adams regarding the findings used to support the granting of this waiver, but found no factual evidence to support the findings and subsequent approval. After discussing the facts with my wife it was clear that an appeal of this decision had to be filed to protect Big Island Pond, and our rights as abutters to this island property.

On Friday May 28th, 2004 I spoke with Mr. Adams to clarify the findings and the basis for the decision to approve the waiver request. I informed Mr. Adams that we would be filing a formal appeal within the 30 day submission period. He informed me that a



formal appeal had to be submitted to him as Administrator of the Wetlands Bureau within 20 days of the granting of the waiver which was Monday June 1st, 2004. I asked him if he was sure of the procedural rules for this appeal. He was quite clear that the 20 day deadline for an appeal was the first step in the appeal process. He also noted that they, the DES Wetlands Bureau Shoreland program, had 30 days to review the appeal and determine if there is any merit to the appeal. Acting in good faith, we spent the weekend writing our appeal based on the guidelines provided by Mr. Adams.

On June 1st, 2004, I called Mr. Adams in the morning and told him I was faxing the appeal to him today. Upon faxing him the appeal at 12:48 PM, I called back to ensure that he received the appeal. He was not in his office and I spoke with Janet Hillson. I asked her to send me confirmation that the appeal was received and also that a copy was forwarded to Commissioner Nolan's office. I received confirmation at 1:18PM from Janet Hillson. I called her back at 1:30PM to ask if the original appeal documents were required as part of the appeal process. She conferred with Mr. Adams and called me back and informed me that the originals had to be sent in and postmarked today, June 1st, 2004. The original documentation was sent certified mail on June 1st, 2004 at 3:27PM.

On Monday June 14th, 2004, I received a letter from Jared Teutsch, Shoreland Specialist, dated Thursday June 10, 2004, and postmarked Friday June 11, 2004 (attached). The letter stated, in part, that "...appeals of waivers or variances under RSA 483-B, the Comprehensive Shoreland Protection Act ('CSPA') must be submitted directly to the Water Council in accordance with Rule Env-WC 200." We were shocked that Mr. Adams instructions and appeal procedures were inaccurate causing us to miss the 30 day deadline for filing an appeal with the Water Council.

On Monday June 14th, 2004, I left a message with Mr. Teutsch to immediately call us. Mr. Teutsch was the original reviewer of this case and had recommended denial of this waiver request. Mr. Teutsch was extremely helpful and always available for questions and information. I left both a home and cell phone number. No return call. On Tuesday June 15th, 2004, I left another message stating the urgency of this call noting that the 30 day filing deadline with the Water Council had expired on Saturday June 12th, 2004. On Wednesday June 16th, 2004, I again called Mr. Teutsch with no answer, so I called the main number for assistance. I was informed that Mr. Teutsch was working in the field and that Mr. Adams was out for a week. They forwarded this information to Darlene Forst and she returned my phone call later that day to discuss this serious situation. She was aware of the case and did some research prior to returning my call. She agreed that there was some confusion and that it appears that inaccurate information was provided by Mr. Adams. Ms. Forst stated that we acted in good faith noting that the instructions given by Mr. Adams were incorrect causing us to miss the Water Council 30 day limit for filing an appeal. She stated that she would hand deliver the appeal to the Water Council Clerk Michael Sclafani.

I then called Mr. Sclafani that same day (Wednesday June 16th, 2004). He was very helpful and gave me a lot of information but did not know why Mr. Adams provided this

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inaccurate information. He stated that the Water Council would not normally consider appeals submitted after the 30 day deadline, but this situation was unusual. He suggested that I contact Mr. Harry T. Stewart, who is Director of the DES Water Division and Mr. Adams boss. I immediately called Mr. Stewart and left him a message regarding this matter.

On Thursday June 17th, 2004 I received a return call from Mr. Teutsch at about 9:00AM. He was very factual and stated that our appeal was left on his desk on Wednesday June 9th, 2004. He stated that he read the appeal and thought that the appeal should have been filed with the Water Council. He then called Mr. Sclafani, clerk for the Water Council, for his legal opinion and was informed that the appeal must go to the Water Council. I asked why it took nine days for the appeal to reach him. He stated that he did the original review of this waiver request for file #2004-00355 and that the appeal review process would probably begin with him, but he did not know why it took nine days to get to him. I stated that if the appeal was reviewed upon submission and determined to be improperly filed, we would have had time to resubmit the appeal to the Water Council.

On Thursday June 17th, 2004, Mr. Stewart returned my call shortly after Mr. Teutsch's call. He was very professional and allowed me the opportunity to explain our situation. He stated that he had some concerns with the situation and that he was going to meet with Ms. Forst and Mr. Teutsch and that he would get back to me shortly. He called me back on Friday June 18th, 2004 and agreed that we were given the wrong procedures for filing this appeal. Mr. Stewart further stated that he spoke with Mr. Sclafani's supervisor, Gretchen Hamel, who together concluded that we should file our appeal with the Water Council Clerk requesting a waiver of Env-WC 203.02 as provided for under Env-WC 203.30 "for good cause". Mr. Stewart also stated he would assent to the motion to waive Env-WC 203.02 and that he would provide a letter to this council in support of our request. This motion is being submitted prior to Mr. Stewart's review (as he is out of the office until next week) and we are only stating that he had assented to our filing of a motion to waive Env-WC 203.02.

Mr. Stewart also informed me that Mr. Sclafani would be out of his office until Tuesday June 22nd, 2004, at which time I called Mr. Sclafani. He provided me with the procedures to submit this appeal along with this motion to waive rule Env-WC 203.02 so that this appeal can be heard by the Water Council.

We respectfully request that the council members consider this motion and accept our appeal by waiving the requirements of Env-WC 203.02. We are concerned residents who reside on Big Island Pond in Atkinson, N.H. and are committed to protecting the quality of this pond and ensuring that the revised laws within the Comprehensive Shoreland Protection Act (CSPA) are enforced to prevent any potential deterioration of this fragile natural resource.

COPY
Thank you,
Mark & Marianne Bonaiuto
Mark & Marianne Bonaiuto

This motion had been delivered to the Water Council Clerk via Federal Express.
The Certificate of Service has been done by first class mail to:

DES Water Division Director, Harry T. Stewart
20 Hazen Drive
PO Box 95
Concord, N.H. 03302

Commissioner Michael P. Nolan
20 Hazen Drive
PO Box 95
Concord, N.H. 03302

Daniel Joseph & Margaret Osborn
PO Box 808
Hampstead, N.H. 03841

Atkinson Conservation Commission
21 Academy Avenue
Atkinson, N.H. 03811

Certificate of Service Attested to by,

Mark & Marianne Bonaiuto

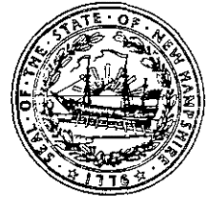


State of New Hampshire
DEPARTMENT OF ENVIRONMENTAL SERVICES

6 Hazen Drive, P.O. Box 95, Concord, NH 03302-0095

(603) 271-2147 FAX (603) 271-6588

June 10, 2004



Mark Bonaiuto
7 Valcat Lane
Atkinson, NH 03811

RE: Wetlands Bureau File # 2004-00355, Rock Island, Hampstead
Tax Map/Lot # 22 / 39

Dear Mr. Bonaiuto:

The Department of Environmental Services Shoreland Program ("DES") received your request on June 1, 2004 for reconsideration of Waiver Approval 2004-00355 under RSA 483-B:11,I to retain an expansion to a nonconforming dwelling on Rock Island in Atkinson on Big Island Pond, more specifically identified on Atkinson Tax Map 22 as Lot 39. Unfortunately, appeals of waivers or variances under RSA 483-B, the Comprehensive Shoreland Protection Act ('CSPA') must be submitted directly to the Water Council in accordance with Rule Env-Wc 200. Please address all appeals correspondence to the Water Council, c/o DES Water Division, 29 Hazen Drive, PO Box 95, Concord, NH 03302-0095. If you have any questions, please contact our office at (603) 271-2147.

Sincerely,

COPY
James A. Feisch
Shoreline Specialist
DES Shoreland Program

cc: Atkinson Conservation Commission
Daniel Osborn

8531

State of New Hampshire

DEPARTMENT OF ENVIRONMENTAL SERVICES

29 Hazen Drive, P.O. Box 95

Concord, NH 03302-0095

MARK BONAUTO

7 VALCAT LANE

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